IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.415 OF 2007
in
APPEAL NO.468 OF 2004
in
R.A.E.SUIT No.521/1055 OF 1996

Bhimsi Haji Nisar .. Applicant

vs

Raichand Khimji Nisar.. Respondent

Mr.H.S.Shreepad Murthy for Applicant

None for Respondent

CORAM : S.A.BOBDE, J

DATED : 17th August, 2007

P.C.

1. This Civil Revision Application is preferred against the order of the lower appellate Court reversing the judgment and decree of the trial Court. The trial Court had decreed the applicant's suit on the ground that the tenant has carried out material alterations in the premises. The appellate Court has reversed that decree.

2. Mr.Murthy, learned counsel for the applicant vehemently argued that the judgment of the appellate Court is vitiated by material irregularity that it has not considered all the evidence which was considered by the trial Court for arriving at the the conclusion that the tenant had carried out material alterations in the premises. It is not possible to accept the general propositions advanced by the learned counsel for the applicant that unless order of the appellate Court shows a consideration of exactly all evidence

considered by the trial Court, the appellate Court should be taken to have acted with material irregularity. It depends on the circumstances of the case. It is possible that the appellate Court considers a particular piece of evidence as being of greater significance and decides on that basis. Such a finding cannot be said to be vitiated because, some other piece of evidence on which the aggrieved party relies is not considered.

3. In the present case, the applicant had tendered evidence to point out the material alterations and additions in the form of Architect's and Commissioner's report. The trial Court considered all the reports and came to the conclusion that there were material alterations. The appellate Court gave greater importance to the Architect's report on the question of material alterations and has recorded a finding that there is gross impropriety in the preposition of the Architect's report. Vide para 25 to 26 apparently the Architects kept on changing their versions on material point namely that whether the Architect who has prepared the report himself inspected the premises. The appellate Court's finding that the Architect who prepared the plan had clearly admitted that he had not gone to the suit premises for inspection. Moreover, the dates on the Architect's report appeared to have been changed and that the Architect has acted under the name of another Architect on a very material aspect i.e. whether the original design of the building is

altered. The appellate Court has found that Exhibit B contains the following words :

> " Thus the portion Marble cills are not properly sealed and will cause is missing in Exh.3 "

Whereas the said words are missing in Exhibit 3 i.e. the 2nd Architect's report. The appellate Court has therefore, completely discarded the two reports of the Architects and has come to the conclusion that there are no material alterations or additions. Merely because the Commissioner's Report is not specifically considered, it does not vitiate the order.

4. In the circumstances of the case, I find no error with the jurisdiction or material irregularity which warrants interference by this Court. Petition is rejected.

(S.A.Bobde, J)